# SWAMI RAMANAND TEERTH MARATHVADA UNIVERSITY NANDED

## SHRI SHIVAJI LAW COLLEGE PARBHANI

***SYNOPSIS***

***On***

**"ANALYTICAL STUDY ON THE CONCEPT OF WITNESSES IN RESPECT OF THEIR PROBLEMS, POSITION AND PROTECTION UNDER INDIAN LEGAL SYSTEM"**

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**A RESEARCH SYNOPSIS SUBMITTED TO THE SWAMI RAMANAND TEERTH MARATHVADA UNIVERSITY NANDED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR REGISTRATION TO THE *DOCTORATE* DEGREE PROGRAMME**
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# I. INTRODUCTION

The proverbial statement in Sanskrit states that,

> ***"Sarvam sarvam na janati, Sarvadno nasti kaschan***
> ***Na ekatra parinisthasti dnayansya purushe kavchit''***

This means, that, one cannot say that everyone is aware of everything. It follows therefore, that no individual can claim to have complete knowledge. So, the experts have always given precedence to the research and self-study. Particularly, in the field of law it becomes all the most significant.

According to Bentham, witnesses are the "eyes and ears of justice". In this research, the researcher proposed to identify the importance, position and protection of witnesses in Indian legal system. Witnesses play a very vital role in criminal cases and civil as well. The hon'ble Wadhva J. in *Swaran Singh v. State of Punjab*[1]stated the importance of witnesses as under:

> "*A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence."*

Witnesses and documents are the chief sources of evidence.The information provided by witnesses becomes part of the evidence. The conviction and acquittal of the offenders is based on the deposition of witnesses specially in criminal cases. The Indian Evidence Act, 1872 says all persons are competent to testify but subject to their understanding. Such understanding must be relating to questions which put before court to them and giving rational answers to those questions. However the evidence of the child witness must be evaluated carefully as a child may be swayed by what others say and may easily be tutored and evidence of such child witness must find corroboration before it is relied upon"[2].Although a person may be competent to testify, but in certain circumstances he may not be compelled to give evidence. There are certain persons who enjoy privilege and they cannot be compelled to testify viz. ambassadors, sovereigns, or diplomatic agents, etc.

[1]*AIR 2000 SC 2017 at p. 2022*.
[2] *State vs Raj kumar, 2001 (2) crimes 126 (Delhi)*

At the same time there is burning issue regarding protection witnesses in India. In this research researcher seeks to answer of some questions like-

- *What is the position of witnesses in Indian legal system and in criminal justice?*
- *Is there any law relating to protection of witnesses in India?*
- *What is the position of witnesses in Indian legal system?*
- *Is there any role of United Nations organization or other International organizations pertaining to witness's protection?*

## 1.2 OBJECTIVES OF THE RESEARCH PROBLEM

The Study has accomplished the following objectives.

1. To find out the meaning and nature of the term 'witness protection'.
2. To know the concept of witnesses and their types with the help of Indian Evidence Act, 1872 and judicial precedence.
3. To understand the certain legal provisions of the special laws pertaining to evidence and witnesses.
4. To know the approach of Indian judiciary towards witnesses protection.
5. To fine out the reasons of turning hostile and their effects on the conviction rate in India.
6. To analyses the possibility of incorporation of any international provisions into Indian laws concerning witnesses' problems and their protection with the help of constitution of India.
7. To know the constitutional rights freedoms available to the witnesses and restrictions as well.

## 1.3 SIGNIFICANCE OF THE RESEARCH TOPIC

This research problem is one of the most important topics, not only in the India, but globally. Researcher is very positive about the significance of this topic. The significance of research topic lies in the fact that it tends to judge the existing problems of witnesses protection in India. My research on problems, position and protection of witnesses will illustrate the importance of cooperation and reconciliation in legal area. This work will provide new perspectives by which to view and ameliorate aggressive behavior among human beings.

Therefore it is anticipated that this research would generate a great deal of interest, not only in legal area, but also among the general public.The study of this research topic will be beneficial for future researcher, students and the society.

## 1.4 REVIEW OF LITERATURE

The Researcher has referred the following

**A. BOOKS :-**

1. "The Law of Evidence" "- Author: Ratanlal Dhirajlal Year 2017Edi.26th, Publisher Lexis Nexis New Delhi
2. "The Law Of Evidence" -Author:Batuk Lal , Year 2012Edi. 19th, Publisher Central Law Agency Allahabad.
3. "Criminal Manual" issued by High Court Judicature at Bombay- Author: S.D. Dighe and A.K. Gupte Year 2016 Edi. 17th , Publisher Hind Law House Pune
4. "Law of evidence" - Author: Dr. V. Krishnamachari Year 2007 Edi. 6th, Publisher S. Gogia and Company Hyderabad.
5. Commentary on "Law of Evidence" (in India Bangladesh Burma Ceylon Malaysia and Singapore) - Author Sarkar S.,Manohar V. R. Year 2009 Edi. 16th, Publisher Lexis Nexis

**B. ARTICLES :-**

1. "Witness Protection: Problems Faced and Need for a Protection Programme in India" – Author : Naveena Varghese Year 2015, Web https://www.lawctopus.com
2. "India need witness protection"- Author : Shipra Prashant Year 2016,Web https://blog.ipleaders.in
3. "Witness protection in India: the judicial endeavour"- Author: Varinder Singh Year 2016, Web http://www.journalijar.com

**C. CASE STUDIES:-**

1. National human rights commission v. State of Gujarat[3]

[3] *2003 (9) SCALE 329.*

2. Public union civil liberties v. Union of India[4]
3. Zahira v. State of Gujarat[5]
4. Sakshi v.Union of India[6]
5. Zahira v. state of Gujarat[7]
6. State of Maharashtra v. Dr. Praful B Desai[8]

## 1.5 HYPOTHESIS

The primary analysis of collected data has prompted the researcher to arrive at following hypothesis which will be put to test in this research.

1) In India conviction rate is low the reasons behind it is unavailability of evidences and hostile witnesses.
2) Yet the Indian parliament did not use the Article 253 for the protection of witnesses in India.
3) Witnesses' failure to depose before court due to intimidation, fear results in wrongful convictions or wrongful acquittals.
4) There is no any protection programme in India relating to witnesses is a major cause behind the problem of witnesses turning hostile specially in criminal cases.
5) There is need to amend the existing Indian laws for the protection of witnesses for security and welfare.

## 1.6 RESEARCH METHODOLOGY

The intellectuals of the society are always inclined to probe for facts of the empirical world and confirm the proved truths of his investigation by expecting or correcting the existing theories. Such probing is called research. All research is collection of evidence or information for ascertaining an assumption or verifying some hypothesis. Thus, research is systematic

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[4] *2003(10) SCALE 96.*

[5] *2004 (4) SCC 158.*

[6] *2004 (6) SCALE 15.*

[7] *2006 (3) SCALE 104.*

[8] *2003 (4) SCC 601.*

attempt to push back the comprehension and seek beyond the horizons of our knowledge, some 'truth' or some 'reality'. We can say that research is a critical and exhaustive investigation or experimentation having as its aims the revision of expected conclusions in the light of newly discovered facts. In simple words, the research is any enquiry of search for the fact or truth. Investigation of every kind which is based on original source of knowledge may be tested as research.

Legal phenomenon requires their own research methodology. Broadly, these methodologies have been classified into two categories, *Viz.,* doctrinal i.e., non-empirical and non-doctrinal*i.e.,* empirical.

Considering the nature of topic selected, a purely doctrinal research may be sufficient. So, researcher proposes to use doctrinal research methodology for present topic.

Researcher proposes to carry out research on legal propositions by way of analyzing the existing statutory provisions and cases by applying the reasoning power. For the same data will collect from primary sources and secondary sources. Primary sources also called original sources i.e. Acts of parliament, Acts passed by state legislature,Decisions delivered by apex courts and High courts (precedents).Secondary sources like text books on law, Articles online journals, newspaper, commentaries do not possess as much authority as the original sources possess. Hence, quality of research depends upon the source material on which the researcher depends upon for his study. Researcher will prefer to rely on more of primary original sources throughout the research. Also, for expert opinions etc, secondary sources like for e.g. Journal articles from peer reviewed journals, as well as online generals along with commentaries, newspaper reports will be considered. Then researchers will adopt comparative analysis approach and analytical approach while dealing with situations and law prevailing in sample of countries.

## 1.7 DETAIL DISCUSSION OF THE TOPIC OF RESEARCH

### 1. INTRODUCTION

In the first chapter, researcher will introduce the subject with its importance, scope and justification with reasons for choosing the topic of research. Researcher has framed hypothesis which will be put to test in the present research. Further, researcher explains the

research methodology to be adopted as well as the objectives. For this, the scheme chalked out will also be incorporated in this segment of thesis.

## 2. CONCEPT OF AN ORDINARY WITNESSTO AN EXPERT WITNESS: A HISTORICAL SKETCH.

Researcher in second chapter will discuss the key concepts relevant to the present topic. Viz. sole witness , injured witnesses , interested witnesses child witnesses, dumb witnesses, hostile witnesses, trap witnesses approver etc. etc. Researcher plans to explain in detail the chapter IX of the Indian Evidence Act, 1872 containing sections 118 to 134 and section 154, 30 as well of the said Act.

The concept of witnesses is not modern it is ancient. The kautilya in his book says –

> *"The parties shall themselves produce who are witnesses and who are not far removed either by time or place. Witnesses who are far away or who will not stir out shall be made to present themselves by the order of the judge."*

Further in this chapter researcher will discuss how was the position of witnesses in Ancient Hindu period, Muslim period, and British period.

## 3.ROLE OF WITNESSES PERTAINING TO PROBLEMS, POSITION AND PROTECTION UNDER INDIAN LAWS.

The researcher proposes to analyze the role of witnesses in existing statutory provisions in the laws existing in India relating to a position and protection. In the present problem the researcher will study in detail the relevant provisions of the code of criminal procedure, 1973; the Indian Penal Code, 1860, the Indian Evidence Act, 1872, Code of Criminal Procedure (Amendment) Act, 2008, Constitution of India, 1950Criminal Law (Amendment) Act, 2005, Greater Bombay Police Act, 1902, Immoral Traffic (Prevention) Act, 1956, Juvenile Justice (Care and Protection of Children) Act, 2000. Prevention of Terrorism Act, 2002, Terrorist and Disruptive Activities (Prevention) Act, 1985, Terrorist and Disruptive Activities (Prevention) Act, 1987, Terrorist and Disruptive Activities (Prevention) Act, 1987, The Criminal Law (Amendment) Act, 2013, The Unlawful Activities (Prevention) Amendment Act, 2004 etc ,etc.

## 4. CONSTITUTIONAL PERSPECTIVES RELATING TO EVIDENCE.

In this chapter the researcher will focus on constitution of India pertaining to evidence. For that purpose researcher will discuss the some articles of the constitution and compare them with the evidence and witnesses. In this chapter researcher try to find out, what constitutional rights and freedoms available to the witnesses. Further in this chapter the relevance of article 20 of the Indian constitution, 1950 and section 300 of the code of criminal procedure, 1973 will discuss. It will also include the part XI specially legislative powers of the state legislature and central government concerning evidence with the help of schedule VII of the constitution of India.

## 5. JUDICIALAPPROACH TOWARDS PROTECTION AND POSITION OF WITNESSES: SPECIAL REFENCE OF HOSTILE WITNESSES.

In this chapter researcher will discuss judicial decisions relating to protection of witnesses. The Supreme Court of India has recently referred to the questions of'Witness Identity Protection' and 'Witness Protection Programme in a number of judgments viz. NHRC v. State of Gujarat: 2003 (9) SCALE 329,PUCL v. Union of India: 2003(10) SCALE 967, Zahira v. State of Gujarat: 2004(4) SCC 158, Sakshi v.Union of India:2004 (6) SCALE 15 and Zahira v.Gujarat 2006 (3) SCALE 104.

In Sakshi the Court emphasized the need for legislation on witness protection. In view of these observations, the Law Commission has taken up the subject suomotu. In this Report it has confinedthe Witness Identity Protection procedures to cases tribal by the Court of Session of Courts of equal rank. Witness Identity Protection may require during investigation, inquiry and trial while Witness Protection Programs apply to the physical protection of the witness outside the Court. It is accepted today that Witness Identity Protection is necessary in the case of all serious offences wherein there is danger to witnesses and it is not confined to cases of terrorism or sexual offences. Initially, the Law Commission prepared a Consultation Paper on "Witness Identity Protection and Witness Protection Programme (August 2004) and invited responses to the Questionnaire[9]. Further the researcher will discuss some other case laws in detail.

[9] *198th law commission report On Witness Identity Protection And Witness Protection.*

## 6. COMPARATIVE STUDY OF INTERNATIONAL LAWS AND INDIAN LAWS WITH SPECIAL REFERENCE TO ARTICLE 253

Austine and Holland says – "International law is only positive morality it is not a law". In this schapter researcher will find out really the international law is not a law? And if it is law what about their implementation in India relating to witnesses and their protection. In this chapter researcher has plan to discuss the sources of international law, Statute of International court of justice Charter of United nations Organization and laws of some countryand compare with the Indian laws concerning witness protection and evidence.

## 7. CONCLUSIONS AND SUGGESTIONS

In the last chapter researcher will arrive at certain conclusion and suggestions.

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Research Student
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